

Investigatory Powers (Amendment) Bill [HL]

SECOND MARSHALLED

LIST OF AMENDMENTS

TO BE MOVED

IN COMMITTEE OF THE WHOLE HOUSE

The amendments have been marshalled in accordance with the Instruction of 20th November 2023, as follows –

Clauses 1 to 13
Schedule

Clauses 14 to 31
Title

[Amendments marked ★ are new or have been altered]

**Amendment
No.**

Clause 21

LORD WEST OF SPITHEAD

- 43** Clause 21, page 41, line 29, leave out “is unavailable to decide whether to give approval under subsection (2)” and insert with “is unable to decide whether to give approval under subsection (2), due to incapacity or inability to access secure communications”

Member's explanatory statement

This amendment would specify that the only exceptional circumstances in which the Prime Minister would be permitted the use of a designate is when he or she is unable to make a decision due to incapacity (ill-health) or lack of access to secure communications.

LORD ANDERSON OF IPSWICH
LORD HOPE OF CRAIGHEAD
LORD FOX

- 44** Clause 21, page 41, line 29, leave out “unavailable” and insert “unable”

Member's explanatory statement

This amendment (based on the Anderson Report at 8.20) would permit the use of a designate whenever the Prime Minister is unable to make a decision, whether through incapacity, conflict of interest or lack of access to secure communications.

LORD COAKER

- 45 Clause 21, page 41, line 31, after “senior official” insert “serving in the Department of that Secretary of State”

Member's explanatory statement

This amendment would limit the officials permitted to decide on the urgency of a warrant.

LORD WEST OF SPITHEAD

- 46 Clause 21, page 41, leave out lines 34 and 35 and insert –
- “(2C) The Prime Minister may designate up to two individuals under this section.
- (2CA) The Prime Minister may designate an individual under this section only if the individual holds the office of Secretary of State and is required in their routine duties to issue warrants under section 19 or section 102.”

Member's explanatory statement

This amendment would permit the Prime Minister to nominate up to two Secretaries of State to act for the Prime Minister if he or she is unable to decide whether to give approval under subsection (2A). The amendment also specifies that those nominated Secretaries of State must already have responsibility for the issuing of warrants under sections 19 or 102 of the Investigatory Powers Act 2016 (which governs warrantry for Interception and Examination of Communications, and Equipment Interference).

LORD COAKER

- 47 Clause 21, page 41, line 35, at end insert “for the Home Department, Foreign, Commonwealth and Development Affairs, Defence, or Northern Ireland”

Member's explanatory statement

This probing amendment would limit the Secretaries of State designated by the Prime Minister to those most experienced with issuing warrants.

LORD WEST OF SPITHEAD

- 48 Clause 21, page 41, line 35, at end insert –
- “(2CA) The Prime Minister must review the individual’s conclusions, as soon as they are able to do so.”

Member's explanatory statement

This amendment would specify that the Prime Minister must review the conclusions and decision of the designated Secretary of State, as soon as is reasonably practicable once they are no longer incapacitated or without access to secure communications.

LORD COAKER

49 Clause 21, page 42, line 1, after “of” insert “the relevant”

After Clause 21

LORD FOX

50 After Clause 21, insert the following new Clause –

“Interception notification for Members of Parliament etc.

After section 26 of the Investigatory Powers Act 2016 (Members of Parliament etc.) insert –

“26A Interception notification for Members of Parliament etc.

- (1) Upon completion of conduct authorised by a warrant under section 26, or the cancellation of a warrant issued under section 26, a Judicial Commissioner must notify the affected party, in writing, of –
 - (a) the conduct that has taken place, and
 - (b) the provisions under which the conduct has taken place.
- (2) The notification under subsection (1) must be sent within thirty days of the completion of the conduct or cancellation of the warrant.
- (3) A Judicial Commissioner may postpone the notification under subsection (1) beyond the time limit under subsection (2) if the Judicial Commissioner assesses that notification may defeat the purposes of an on-going serious crime or national security investigation relating to the affected party.
- (4) A Judicial Commissioner must consult with the person to whom the warrant is addressed in order to fulfil an assessment under subsection (3).”

Member's explanatory statement

This amendment would require that members of a relevant legislation who are targets of interception are notified after the fact, as long as it does not compromise any ongoing investigation.

Clause 22

LORD WEST OF SPITHEAD

51 Clause 22, page 42, line 23, leave out from “Minister” to end of line 24 and insert “is unable to decide whether to give approval under subsection (3) or (as the case may be) (6), due to incapacity or inability to access secure communications”

Member's explanatory statement

This amendment would specify that the only exceptional circumstances in which the Prime Minister would be permitted the use of a designate is when he or she is unable to make a decision due to incapacity (ill-health) or lack of access to secure communications.

LORD ANDERSON OF IPSWICH
LORD HOPE OF CRAIGHEAD
LORD FOX

51A Clause 22, page 42, line 23, leave out “unavailable” and insert “unable”

Member's explanatory statement

This amendment (based on the Anderson Report at 8.20) would permit the use of a designate whenever the Prime Minister is unable to make a decision, whether through incapacity, conflict of interest or lack of access to secure communications.

LORD WEST OF SPITHEAD

52 Clause 22, page 42, leave out lines 28 and 29 and insert –

“(7C) The Prime Minister may designate up to two individuals under this section.

(7D) The Prime Minister may designate an individual under this section only if the individual holds the office of Secretary of State and is required in their routine duties to issue warrants under section 19 or section 102.”

Member's explanatory statement

This amendment would permit the Prime Minister to nominate up to two Secretaries of State to act for the Prime Minister if he or she is unable to decide whether to give approval under subsections (3) or (6). The amendment also specifies that those nominated Secretaries of State must already have responsibility for the issuing of warrants under sections 19 or 102 of the Investigatory Powers Act 2016 (which governs warrantry for Interception and Examination of Communications, and Equipment Interference).

LORD WEST OF SPITHEAD

53 Clause 22, page 42, line 29, at end insert –

“(7CA) The Prime Minister must review the individual’s conclusions, as soon as they are able to do so.”

Member's explanatory statement

This amendment would specify that the Prime Minister must review the conclusions and decision of the designated Secretary of State, as soon as is reasonably practicable once they are no longer incapacitated or without access to secure communications.

After Clause 22

LORD FOX

54 After Clause 22, insert the following new Clause –

“Targeted equipment interference notification for Members of Parliament etc.

After section 111 of the Investigatory Powers Act 2016 (Members of Parliament etc.) insert –

“111A Targeted equipment interference notification for Members of Parliament etc.

- (1) Upon completion of conduct authorised by a warrant under section 111, or the cancellation of a warrant issued under section 111, a Judicial Commissioner must notify the affected party, in writing, of –
 - (a) the conduct that has taken place, and
 - (b) the provisions under which the conduct has taken place.
- (2) The notification under subsection (1) must be sent within thirty days of the completion of the conduct or cancellation of the warrant.
- (3) A Judicial Commissioner may postpone the notification under subsection (1) beyond the time limit under subsection (2) if the Judicial Commissioner assesses that notification may defeat the purposes of an on-going serious crime or national security investigation relating to the affected party.
- (4) A Judicial Commissioner must consult with the person to whom the warrant is addressed in order to fulfil an assessment under subsection (3).”

Member's explanatory statement

This amendment would require that members of a relevant legislature who are targets of hacking are notified after the fact, as long as it does not compromise any ongoing investigation.

LORD FOX

55 After Clause 22, insert the following new Clause –

“Annual reporting on surveillance of Members of Parliament etc.

- (1) Section 234 of the Investigatory Powers Act 2016 is amended as follows.
- (2) In subsection (2) –
 - (a) in paragraph (c), after first “to” insert “Members of Parliament and”
 - (b) after paragraph (d), insert new paragraph (da) –
 - “(da) information in particular about warrants issued, considered or approved that are targeted interception warrants or targeted examination warrants of the kind referred to in section 26 and section 111 (Members of Parliament etc.),”

Member's explanatory statement

This amendment would ensure that the Investigatory Powers Commissioner's annual reports provide information about the operation of safeguards in relation to surveillance of Members of Parliament etc., (as is already required for journalists); and information in particular about the warrants considered or approved targeted at Members of Parliament etc. (further to the general requirement to provide information on general targeted interception and hacking warrants).

LORD COAKER

55A After Clause 22, insert the following new Clause –

“Reporting requirement: investigatory powers and Members of Parliament

Within 30 days of the day on which this Act is passed, the Secretary of State must publish and lay before Parliament a report on the use of powers under the Investigatory Powers Act 2016 in relation to Members of Parliament.”

Member's explanatory statement

This amendment is designed to probe the extent to which powers in the Investigatory Powers Act 2016 have been used in relation to Members of Parliament.

Clause 26

LORD SHARPE OF EPSOM

56 Clause 26, page 44, line 22, at end insert –

“(3) After paragraph 24 insert –

“25 (1) Nothing in section 56(1) prohibits –

- (a) a disclosure to a relevant coroner conducting an NI investigation or inquest, or
- (b) a disclosure to a qualified person –
 - (i) appointed as legal adviser to an inquest conducted by the coroner, or
 - (ii) employed under section 11(3) of the Coroners Act (Northern Ireland) 1959 (c. 15) (“the 1959 Act”) by a relevant coroner to assist the coroner in an investigation conducted by the coroner,

where, in the course of the investigation or inquest, the relevant coroner (“C”) has ordered the disclosure to be made to C alone or (as the case may be) to C and any qualified person appointed or employed by C as mentioned in paragraph (b).

- (2) A relevant coroner may order a disclosure under sub-paragraph (1) only if the coroner considers that the exceptional circumstances of the case make the disclosure essential in the interests of justice.

- (3) In a case where a coroner (“C”) conducting, or who has been conducting, an NI investigation or inquest is not a relevant coroner, nothing in section 56(1) prohibits –
- (a) a disclosure to C that there is intercepted material in existence which is, or may be, relevant to the investigation or inquest;
 - (b) a disclosure to a qualified person appointed by C as legal adviser to the inquest or employed by C under section 11(3) of the 1959 Act to assist C in the investigation, which is made for the purposes of determining –
 - (i) whether any intercepted material is, or may be, relevant to the investigation, and
 - (ii) if so, whether it is necessary for the material to be disclosed to the person conducting the investigation.
- (4) In sub-paragraph (3) “intercepted material” means –
- (a) any content of an intercepted communication (within the meaning of section 56), or
 - (b) any secondary data obtained from a communication.
- (5) In this paragraph –
- “the 1959 Act” has the meaning given by sub-paragraph (1);
 - “coroner” means a coroner appointed under section 2 of the 1959 Act;
 - “NI investigation or inquest” means an investigation under section 11(1) of the 1959 Act or an inquest under section 13 or 14 of that Act;
 - “qualified person” means a member of the Bar of Northern Ireland, or a solicitor of the Court of Judicature of Northern Ireland);
 - “relevant coroner” means a coroner who is a judge of the High Court or of a county court in Northern Ireland.
- 26 (1) Nothing in section 56(1) prohibits –
- (a) a disclosure to a relevant person conducting an inquiry under the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 (2016 asp 2) (“IFASDA 2016”), or
 - (b) a disclosure to a qualified person appointed under section 24 of that Act to assist a relevant person in the inquiry,
- where, in the course of the inquiry, the person conducting the inquiry has ordered the disclosure to be made to that person alone or (as the case may be) to that person and any qualified person appointed to assist a relevant person in the inquiry.
- (2) A relevant person may order a disclosure under sub-paragraph (1) only if the person considers that the exceptional circumstances of the case make the disclosure essential in the interests of justice.
- (3) Nothing in section 56(1) prohibits –
- (a) a disclosure to a relevant person conducting an inquiry under IFASDA 2016, or

- (b) a disclosure to a qualified person appointed under section 24 of that Act to assist a relevant person in the inquiry, that there is intercepted material in existence which is, or may be, relevant to the inquiry.
- (4) In sub-paragraph (3) “intercepted material” means –
- (a) any content of an intercepted communication (within the meaning of section 56), or
 - (b) any secondary data obtained from a communication.
- (5) In this paragraph “relevant person” means –
- (a) a sheriff principal,
 - (b) a temporary sheriff principal, or
 - (c) a sheriff or part-time sheriff (but not a summary sheriff or part-time summary sheriff) designated as a specialist under section 37(1) or (3) of IFASDA 2016.
- (6) In this paragraph “qualified person” means an advocate or solicitor; and “advocate” and “solicitor” have the same meaning as in IFASDA 2016 (see section 40 of that Act).”

Member's explanatory statement

This amendment inserts into Schedule 3 to the Investigatory Powers Act 2016 (exceptions to exclusion of matters from legal proceedings etc) exceptions about disclosures to inquiries or inquests in Northern Ireland or Scotland into a person's death. The exceptions are similar to existing provision in relation to England and Wales.

After Clause 27

LORD COAKER

57

After Clause 27, insert the following new Clause –

“Review: transparency and public understanding of investigatory powers and national security

- (1) Within one year of the day on which this Act is passed, the Secretary of State must publish and lay before Parliament a report on transparency of investigatory powers, national security and serious crime matters, as outlined in subsection (2).
- (2) The report must include but is not limited to –
 - (a) an assessment of the balance between transparency surrounding investigatory powers, national security and serious crime matters and national security, the operational security of the intelligence community, law enforcement and Home Office, and individual privacy;
 - (b) an assessment of the role of public transparency in public understanding of national security issues and investigatory powers;
 - (c) an examination of the case for promoting greater transparency surrounding national security issues and investigatory powers.”

Member's explanatory statement

This requires the Secretary of State to report on how public understanding of national security and investigatory powers can be enhanced by transparency.

LORD COAKER

58 After Clause 27, insert the following New Clause—

“Report on further investigatory powers

- (1) Within a period of at least one year and no more than two years from the day on which this Act is passed, the Secretary of State must publish a report, as outlined in section (2).
- (2) The report must include but need not be limited to—
 - (a) an assessment of the adequacy of the investigatory powers framework in protecting national security, and
 - (b) a recommendation as to whether further legislation should be brought forward in response to the report.”

Member's explanatory statement

This amendment would ensure the Government publishes a report on the performance of the current legislative framework and what further changes may be required.

Clause 29

LORD SHARPE OF EPSOM

59 Clause 29, page 45, line 12, leave out “to subsection (2)” and insert “as follows”

Member's explanatory statement

This amendment is consequential on the amendment in the name of Lord Sharpe of Epsom at page 45, line 14.

LORD SHARPE OF EPSOM

60 Clause 29, page 45, line 14, at end insert—

- “(3) The power under section 272(6) of the Investigatory Powers Act 2016 may be exercised so as to extend to the Isle of Man or any of the British overseas territories any amendment or repeal made by or under this Act of any part of that Act (with or without modifications).”

Member's explanatory statement

This amendment provides for the power in section 272(6) of the Investigatory Powers Act 2016 (extent) to be capable of being exercised so as to extend to the Isle of Man or any of the British overseas territories any amendments of that Act made by this Bill.

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